

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**BMG RIGHTS MANAGEMENT
(US) LLC, and ROUND HILL
MUSIC LP**

Plaintiffs,

v.

**COX COMMUNICATIONS, INC. and
COXCOM, LLC**

Defendants.

Case No. 1:14-cv-1611(LOG/JFA)

**BMG RIGHTS MANAGEMENT (US) LLC AND ROUND HILL MUSIC LP'S
MOTION FOR EVIDENTIARY SANCTIONS BASED ON SPOILIATION OF
DEFENDANTS' USER RECORDS AND RELATED EVIDENCE**

Pursuant to Federal Rules of Civil Procedure 37, Plaintiffs BMG Rights Management (US) LLC and Round Hill Music LP (the "Copyright Holders") respectfully move this Court to enter an order granting evidentiary sanctions against Defendants Cox Communications, Inc. and CoxCom, LLC ("Cox") based on Cox's spoliation of records linking Cox subscribers to IP addresses associated with copyright infringement. Cox brazenly deleted arguably relevant information while fully aware of the possibility of litigation, both in the years leading up to this case and in the months following its commencement. Specifically, the Copyright Holders respectfully move this Court to issue the following adverse inferences:

- For all accounts for which Cox has not produced subscriber information linked to a specific IP address, Cox may not assert that Plaintiffs cannot prove infringement by Cox users of the copyrighted works as identified in Rightscorp infringement notices on the ground that the IP addresses are not tied to specific infringers.
- The expert opinions and statistical analysis by Plaintiffs' Expert Robert Bardwell and his determination of the probability that sequences of infringement from a

single IP address are attributable to a single Cox subscriber, are presumed correct and conclusions of fact.

- As an alternative to the former requested inferences, Copyright Holders request, at a minimum, that the Court instruct the jury that Cox has destroyed and continues to destroy subscriber records that it had a duty to preserve from the time it anticipated litigation through the present.

The grounds and authorities in support of this motion are set forth in the Copyright Holders' Memorandum in Support of Their Motion for Evidentiary Sanctions Based on Spoliation of Defendants' User Records and Related Evidence and the attached supporting declarations and exhibits. A proposed order is submitted herewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2015, I electronically filed a true and correct copy of the foregoing using the Court's CM/ECF system, which then sent a notification of such filing (NEF) to all counsel of record:

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